



THE COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD
ONE SOUTH STATION
BOSTON, MA 02110
(617) 305-3525

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

October 9, 2008

Mary Beth Gentleman, Esq.
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210

Re: EFSB 99-4B Mirant Kendall, LLC
Notice of Project Change - Realignment of Broad Canal Walkway Design

Dear Ms. Gentleman:

On December 15, 2000 the Energy Facilities Siting Board ("Siting Board" or "Board") approved a petition submitted by Southern Energy Kendall, LLC¹ to upgrade the generating facilities at the existing Kendall Square Station in Cambridge, Massachusetts from an approximately 64 megawatt facility to a 234 megawatt facility. Southern Energy Kendall, LLC, 11 DOMSB 255 (2000) ("Southern Energy Decision"). The facility is presently owned by Mirant Kendall, LLC ("Mirant Kendall").

The Siting Board requires that a project proponent, or its successor in interest, notify the Board of any changes, other than minor variations, to the proposal as it was presented to the Board, so that the Siting Board may decide whether to further inquire into a particular issue. Southern Energy Decision at 396. By letter dated July 3, 2008, Mirant Kendall updated the Siting Board with regard to the Company's proposal for the realignment of the public walkway located along the Broad Canal ("Walkway"). This seven-page letter contained the background of the status and development of the Walkway that necessitated the project change, and an analysis of the environmental impacts of the project change. In addition, a number of documents were enclosed with this letter as attachments.²

¹ Southern Energy Kendall, LLC changed its name to Mirant Kendall, LLC on January 19, 2001.

² The attachments consisted of: (A) Revised Walkway Plans; (B) Massachusetts Historical Commission Approval Letter; (C) City of Cambridge Conservation Commission Approval; and (D) Chapter 91 Amended License Application.

The July 3 letter concludes by asserting that: “the realignment of the Walkway design provides additional environmental and public benefits and will increase the reliability of the facility relative to the original Walkway design. Accordingly, the Company respectfully suggests that further inquiry into this project change is not warranted.” Letter of July 3, 2008, from Mary Beth Gentleman, Esq., of Foley Hoag LLP addressed to Jolette Westbrook, Esq. (“July 3 Letter”).

Previously, on June 6, 2008, Mirant Kendall requested an amendment to its Chapter 91 License from MassDEP.³ In the Notice of Project Change, Kendall indicated that the Siting Board may want to defer action on the Notice of Project Change until MassDEP’s Division of Wetlands and Waterways acts on the amendment to the Chapter 91 License. However, by letter dated September 9, 2008, Mirant Kendall stated that it would prefer to begin construction of the Walkway by November 1, 2008 so all in-water construction could be completed by February 15, 2008 - the outside date for in-water construction permitted by the Army Corps of Engineers and the City of Cambridge Conservation Commission.⁴ On September 9, 2008 Mirant Kendall also submitted to the Siting Board an Advisory Opinion from the Massachusetts Environmental Policy Act Office (“MEPA”) indicating that the proposal does not require the submission of a MEPA Notice of Project Change, and therefore no further MEPA review is required.

In the underlying decision concerning the Kendall Station facility, the Siting Board did not impose any condition relating to the Walkway. Further, the Siting Board stated that “Plans for both the discharge and canal walk require further review from other regulatory agencies to determine both the effectiveness of the different design options and their impacts on fishery, historical and recreational resources. The Siting Board concludes that the adoption of the discharge and canal walk designs agreed upon by the Company and affected federal, state, and local regulatory authorities would minimize the wetland impacts associated with these elements of the proposed project.” Southern Energy Decision at 328.

Mirant Kendall received approval of the proposed Walkway realignment and modifications from (1) the Cambridge Board of Zoning Appeals on December 14, 2007; (2) the Cambridge Conservation Commission on May 1, 2008, and (3) the Cambridge Historical Commission on May 22, 2008. In addition, MEPA has determined that the proposed realignment requires no further review under MEPA. MEPA further pointed out that the proposed realignment and modifications will be subject to extensive public review under the Chapter 91 licensing process. Mirant Kendall expects Chapter 91 approval prior to November 1, 2008, the projected start date for construction of the Walkway. The Siting Board notes that construction of the Walkway cannot begin until all permits are approved.

The Siting Board has a well-developed standard for evaluating project changes. Specifically, the Board will not make further inquiry regarding project changes if the change does not alter in any substantive way either the assumptions or conclusions reached by the Board in its analysis of the project’s environmental impacts in the original proceeding. Fore River

³ The public comment period for the Chapter 91 License closed on August 26, 2008.

⁴ Mirant Kendall stated that the lead time for ordering pilings for the project is six weeks in advance of construction.

Development, LLC - Project Change, 15 DOMSB 403 (2006) citing Berkshire Power Decision on Compliance, 7 DOMSB 423, 437 (1997) and IDC Bellingham LLC Decision on Compliance, 11 DOMSB 27, 38-39 (2000).

The supporting information provided to the Siting Board by Mirant Kendall indicates that this proposed project change meets the standard articulated above. Consequently, I conclude that the proposed project change will not alter in any substantive way either the assumptions or conclusions reached by the Board in its analysis of the project's environmental impacts in the original proceeding. Therefore, no further inquiry is necessary.

Very truly yours,

Jolette Westbrook, Director

cc. Service List